

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELL T. HENDRIX,

Plaintiff,

v.

CALIFORNIA DEPT. OF CORR. AND
REHAB., et al.,

Defendants.

No. 2:22-cv-1319 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by

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1 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989); Franklin, 745 F.2d at 1227.

15 In order to avoid dismissal for failure to state a claim a complaint must contain more than
16 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause
17 of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
18 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
19 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
20 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A
21 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
22 the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
23 at 678. When considering whether a complaint states a claim upon which relief can be granted,
24 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
25 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
26 U.S. 232, 236 (1974).

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1 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
2 which relief can be granted under federal law. Plaintiff's complaint must be dismissed. The
3 court will, however, grant leave to file an amended complaint.

4 Plaintiff seeks damages for injuries sustained by him on August 1, 2021 when he fell
5 while trying to climb to a top bunk from a desk and for injuries to a finger sustained on August
6 15, 2021 when plaintiff attempted to close the door to his cell. Both incidents occurred at the
7 California Health Care Facility (CHCF) in Stockton. Plaintiff seeks relief under the Americans
8 with Disabilities Act (ADA), 42 U.S.C § 12101 et seq.¹ The defendants are the California
9 Department of Corrections and Rehabilitation and Hensel Phelps Construction who, according to
10 plaintiff, built CHCF.

11 The main problem with plaintiff's claims is that he does not allege that he has any
12 qualifying disability. He simply alleges he was injured as the result of conditions of confinement.
13 In order to adequately allege a claim for harmful conditions of confinement under the Eighth
14 Amendment, plaintiff must point to facts indicating he sustained injury as the result of a prison
15 official's deliberate indifference to a substantial risk of serious harm. Farmer v. Brennan, 511
16 U.S. 825, 834, 837 (1994). He has not done so in his original complaint.

17 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
18 plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be
19 complete in itself without reference to any prior pleading. This is because, as a general rule, an
20 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th
21 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any
22 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
23 and the involvement of each defendant must be sufficiently alleged.

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27 ¹ Plaintiff also brings claims under the Rehabilitation Act, 42 U.S.C. § 794. The rights conferred
28 by the ADA and the Rehabilitation Act are essentially the same. Zuke v. Regents of University of California, 166 F.3d 1041, 1045 n. 11 (9th Cir.1999)

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Director of the California
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
10 number assigned this case and must be labeled "Amended Complaint." Failure to file an
11 amended complaint in accordance with this order will result in a recommendation that this action
12 be dismissed.

13 Dated: August 19, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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